REMARKS

Claims 1-14 are pending. Applicants respectfully submit that these amendments made after final are appropriate under 37 C.F.R. §1.116(b) in that the amendments comply with the Examiner's suggested requirements set forth in the Office Action dated January 12, 2005. Moreover, Applicants have amended all claims, except claims 7 and 11-13, to further clarify the claims to put the claims in condition for allowance. Reconsideration and allowance of the present application based on the following remarks are respectfully requested.

Amendment to the Specification

The Applicants have amended the Specification in the first paragraph after the "Title" to insert the proper foreign priority information.

Claim Rejection Under 35 U.S.C. § 102

Independent claims 1, 8 and 14 (and dependent claims 4, 9 and 11) have been rejected, in final, under 35 U.S.C. § 102(e) as anticipated by Harper et al. (2003/0036882). In response, the Applicants have amended independent claims 1, 8 and 14 to include two limitations suggested by the Examiner in its January 12, 2005 Office Action in this application:

(i)   "[[a]] one or more spare servers"; and

(ii)   "wherein each of the spare servers or the primary servers having spare capacity is able to function as either the spare server or the primary server."

The Examiner alluded to these two distinguishing items in its January 12, 2005 Office Action, but maintained the rejection because these items were "not recited in the rejected claim(s)." The Examiner's specific comments read:

8.   In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the system being an (n,k) cluster composition and not having a distinction between primary and space servers) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The claims are written, "judging the existence of a spare server" and do not distinctly claim more than one spare server. Also, the claims are written to include primary and spare servers and do not include any indication that the invention is operated without distinction of primary and spare servers.

Therefore, applicants' arguments are not persuasive and rejections of claims under both Fulton and Harper stand.

January 12, 2005 Office Action, p. 17. The Examiner made this response when replying to the following arguments by the Applicant in its October 15, 2004 Response:

The Office Action also rejected Claims 1-14 under 35 U.S.C. 102(e) as being anticipated by Harper (U.S. Pub. No. 2003/0036882). Harper relates to a computer system comprising one primary server and one spare server, or a number of primary servers and only one spare server (see 551 A/B of FIG. 5). Thus, Harper corresponds to an (n,1) cluster composition, a cluster system existing only in one spare server. In contrast, the present invention is a composition mixing a number of primary servers and spare servers, and is thus an (n,k) cluster composition. In addition, the present invention is operated without distinction of primary servers and spare servers. Under the cluster computing environment, whenever a spare server can be a primary server, especially if the rest capacity of the primary server remains, the spare server can be used instead of operating an unstable server. However, in Harper, because there is only one spare server, if, during the first duplexing, the other primary server is unstable, there is no alternative."

October 15, 2005 Applicant Response, p. 8. The Applicants have therefore complied with the Examiner's comments above and added those limitations ((i) and (ii)) to distinguish the related art, in accordance with 37 C.F.R. §1.116(b). As described above, Harper et al. teaches only one spare server, while amended claims 1, 8 and 14 now claim "one or more spare server*s*." Also, the amendment of item (ii) above shows that "each of the spare servers or the primary servers having spare capacity is able to function as either the spare

server or the primary server" that also distinguishes Harper et al. For these reasons, reconsideration of independent claims 1, 8 and 14 is respectfully requested.

In addition, reconsideration of dependent claims 4, 9 and 11 is respectfully requested as these claims depend on independent claims 1 and 8, and are therefore patentable over Harper et al. for the same reasons as provided for those independent claims from which they depend.

Claim Rejection Under 35 U.S.C. § 103-Harper et al. and Harper II

Dependent claims 2, 6, 7 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper et al. in view of Harper II (U.S. Patent No. 6,629,266). In response, the Applicants respectfully request reconsideration of these dependent claims in view of the new amendments (i) and (ii) (above) made to the independent claims from which they depend. The Applicants respectfully submit that they are not obvious over Harper et al. in view of Harper II for the same reasons as provided for those independent claims from which they depend.

Claim Rejection Under 35 U.S.C. § 103-Harper et al. and Kumar

Dependent claims 3, 5, 12 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper et al. in view of Kumar (U.S. Patent No. 6,789,213). In response, the Applicants respectfully request reconsideration of these dependent claims in view of the new amendments (i) and (ii) (above) made to the independent claims from which they depend. In particular, while Kumar discloses the ability of one sub-cluster to "safely take over services of one or more other sub-clusters in the cluster computing system...when the clustered computing system has been fragmented into two or more disjointed sub-clusters due to an operational failure" (Col. 3, lines 1-12), there is no teaching or suggestion in Kumar where "each of the spare servers or the primary servers having spare capacity is able to function as either the spare server or the primary server" (regardless of any failure as found in amended independent claims 1, 8 and 14.

The Applicants therefore respectfully submit that they are not obvious over Harper et al. in view of Kumar for the same reasons as provided for those independent claims from which they depend.

Amendments For Clarity

The Applicants have reviewed the claims and made a number of the following amendments to clarify and make consistent the language in the claims. The Applicants assert that these amendments are appropriate under 37 C.F.R. §1.116 in that they put the application in better condition for allowance.

In claim 1, the Applicants have

(1)   added "primary" before "servers" in the "collecting" step;

(2)   replaced "if" with "when" in the "judging" step;

(3)   added "primary" before "servers" in the "judging" step;

(4)   deleted "a" before "spare server" and "primary server" in the "judging" step;

(5)   added "one or more" before "spare server" in the "judging" step;

(6)   added "s" to "spare sever" in the "judging" step;

(7)   deleted "other" before "primary server" in the "judging" step; and

(8)   replaced "if" with "when" in the "duplexing" step.

In claim 2, the Applicants have:

(1)   replaced "group including" with "an"; and

(2)   added the word "or" between "usage" and "buffer."

In claim 3, the Applicants have:

(1)   deleted the phrase "participating service in practice for".

In claim 4, the Applicants have:

(1)   replaced "if" with "when" in the "selecting" step; and

(2)   replaced "sparing" with "spare" before "servers".

In claim 5, the Applicants have:

(1)   replaced "if" with "when" in the "selecting" step.

In claim 6, the Applicants have:

(1)   replaced "if" with "when" in the "judging" step;

(2)   replaced "if" with "when" in the "judging" step after the word "duplexing"; and

(3)   replaced "if" with "when" in the "selecting" step.

In claim 8, the Applicants have:

(1)   replaced "a" with "one of the number of" before "primary server" in the "cluster controlling means";

(2)   added an "s" to "server" in the "cluster controlling means";

(3)   replaced "if" with "when" in the "cluster controlling means";

In claim 9, the Applicants have:

(1)   replaced "of" with "from" in the "system state information block" element;

(2)   added "of the primary" before "server" in that same element;

(3)   added "s" to "sever" in same element; and

(4)   replaced "if" with "when" in the "rejuvenation command producing block";

In claim 10, the Applicants have:

(1)   deleted "information";

(2)   replaced "group including" with "an"; and

(3)   added "or" between "usage" and "buffer".

In claim 12, the Applicants have:

(1)   deleted "practically participating service for being"; and

(2)   added "computer system" after "cluster."

In claim 14, the Applicants have:

(1)   the same changes made to the sub-steps of claim 1 where repeated here for the sub-steps of claim 14.
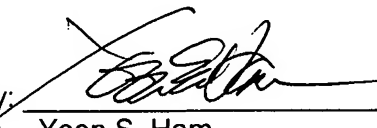
Conclusion

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Applicants do not believe any fees are needed to accompany this Response. No extension of time is needed, and the new claims added do not exceed the 20 claim total limit, nor the three independent claim limit.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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Date: February 13, 2006